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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,596	08/22/2001	Michael Joseph Kemp	R346/7027	7171

23628 7590 08/12/2004

WOLF GREENFIELD & SACKS, PC  
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BOSTON, MA 02210-2211

EXAMINER
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JACOBSON, TONY M

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 08/12/2004

10

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/831,596

Applicant(s)

KEMP, MICHAEL JOSEPH

Examiner

Elizabeth A McChesney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27-40, 43 and 44 is/are allowed.
- 6) ☒ Claim(s) 15, 21, 41 and 42 is/are rejected.
- 7) ☒ Claim(s) 16-20 and 22-26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 15 and 21** are rejected under 35 U.S.C. 102(e) as being anticipated by Kaku (US Patent No. 5,896,064).

Regarding **claims 15 and 21**, Kaku discloses a gain control apparatus, which includes storing a plurality of gain characteristics at different levels (col. 4-lines 17-21). Kaku further discloses determining a gain characteristic to apply (col. 4-lines 21-25), which is determined by performing interpolation between gain characteristics stored (col. 39-44).

3. **Claims 41 and 42** are rejected under 35 U.S.C. 102(e) as being anticipated by Niimi (US Patent No. 6,084,974).

Regarding **claims 41 and 42**, Niimi discloses a digital signal processing device, which is capable of dealing with signals of a wide dynamic range. Niimi discloses a means for storage to in which gain characteristics are stored (col. 6-lines 28-38). Niimi

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further discloses assessing the amplitude with respect to the gain (col. 7-lines 33-41).

Niimi further discloses receiving an input signal, which has a gain characteristic, and generating a gain value in response to the input signal (see claim 9) wherein for each sample the gain corresponds to the amplitude.

### ***Response to Arguments***

4. Applicant has cancelled claims and has added new claims 15-44, which are currently pending in the present application. Applicant has also included previously objected claims in the last rejection, Paper No. 7, into the independent claims.

However, upon further consideration the case is not in condition for allowance and Kaku has been applied to the above rejection as well as Niimi still reads on claims 41 and 42 as they are disclosed.

### ***Conclusion***

5. Claims 27-40, 43 and 44 are allowable.

6. Claims 16-20 and 22-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Choi (US Patent No. 6,307,900 B1) discloses a method and apparatus for recovering digital data by employing asynchronous data sampling techniques.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. McChesney whose telephone number is (703) 308-4563. The examiner can normally be reached Monday – Friday, 8:00 am – 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

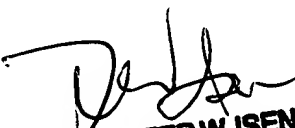
**Or faxed to:**

**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

EAM *EAM*  
July 10, 2004

  
**FORESTER W. ISEN**  
**SUPERVISORY PATENT EXAMINER**